IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

SUO MOTU CONTEMPT PETITION NO. 3 OF 2006

High Court on its own Motion ..Petitioner

Vs.

Pandu Kalu Kuwar ..Contemnor/ Respondent

Mr. B.H. Mehta, APP for Petitioner.
Mr. Vishwanath S. Talkute for respondent.

CORAM: B.H. MARLAPALLE & J. H. BHATIA,JJ.

Date : November 09, 2006.

P.C.:

1. After the reply was filed by the respondent no.1 setting out the circumstances under which the alleged statement, which was taken note of by this court vide its order dated 24/8/2005 in Writ Petition No.6701 of 2004, was made in Writ Petition No.2241 of 2003, we had called upon the learned APP to satisfy us whether the instant proceeding is not hit by Section 20 of the Contempt of Courts Act, 1971 (the Act for short) and more particularly having regards to the law laid down by a three Judge Bench in the case of Pallav Sheth vs. Custodian and ors. **[(2001) 7 SCC 549]**. In

para 44 of the said judgment their Lordships stated as under:-

> "44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

2. The suo motu cognizance taken by this court

vide its order dated 24/8/2005, as stated hereinabove, is on the basis of the alleged false statement made by the respondent no.1 in Writ Petition No.2241 of 2003 which was filed before this court on 21/2/2003 and thus the cause of action for such a false statement amounting to criminal contempt within the meaning of Section 2(c) would commence from 21/2/2003. It is not known on what date the petition had come up for hearing before this court, but it is an admitted fact that it was finally decided on 23/2/2004. Even if we go to the extent of presuming that the cause of action arose on 23/2/2004 when Writ Petition No.2241/03 was decided by this court, taking cognizance by the order dated 24/8/2005 for the first time would certainly be hit by limitations within the meaning of Section 20 of the Act. Mr. Mehta the learned APP tried to persuade us to rely upon the provisions of Section 17 of the Limitations Act on the grounds that the respondent no.1 had played fraud on this court and when a fraud is played and allowed to be perpetuated it is not Section 20 of the Act but Section 17 of the Limitations Act would come into play. This argument could be considered if we are satisfied that the

respondent no.1 was guilty of playing a fraud and for this two conditions are necessary, namely, the act of playing fraud must be preceded by (a) a calculated move and (b) knowledge of making such a statement before the court on oath. The respondent in the instant case is an illiterate tiller and in his reply he has very clearly stated that the petition memo before this court as well as the appeal memo before the District Court was drafted by his Advocate who called upon him to sign for verification. We, therefore, do not agree that there is even a prima facie case of fraud in the instant case and, therefore, we cannot rely upon the provisions of Section 17 of the Limitations Act.

3. Consequently, the contempt proceedings initiated suo motu required to be discharged and we order accordingly.

(J.H. Bhatia, J.) **(B.H. Marlapalle,J.)**